

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

JUSTIN COYLE,
Booking #15746082,

Plaintiff,

vs.

CLEAR CHANNEL
COMMUNICATIONS, et al.,

Defendants.

Case No.: 3:16-cv-01173-LAB-KSC

**ORDER DISMISSING CIVIL
ACTION WITHOUT PREJUDICE
FOR FAILING TO PAY
FILING FEE REQUIRED
BY 28 U.S.C. § 1914(a) AND/OR
FAILING TO MOVE TO PROCEED
IN FORMA PAUPERIS
PURSUANT TO
28 U.S.C. § 1915(a)**

Justin Boyle (“Plaintiff”), currently detained at the San Diego Central Jail and proceeding pro se, has submitted an incomprehensible pleading seeking unspecified relief against various public and private business entities, and invoking the Civil Rights Act, 42 U.S.C. § 1983 (ECF No. 1).

I. Failure to Pay Filing Fee or Request IFP Status

All parties instituting any civil action, suit or proceeding in a district court of the United States, except an application for writ of habeas corpus, must pay a filing fee of

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1 \$400. *See* 28 U.S.C. § 1914(a).¹ The action may proceed despite a plaintiff's failure to
 2 prepay the entire fee only if he is granted leave to proceed IFP pursuant to 28 U.S.C.
 3 § 1915(a). *See Andrews v. Cervantes*, 493 F.3d 1047, 1051 (9th Cir. 2007); *Rodriguez v.*
 4 *Cook*, 169 F.3d 1176, 1177 (9th Cir. 1999). However, a prisoner who is granted leave to
 5 proceed IFP remains obligated to pay the entire fee in "increments" or "installments,"
 6 *Bruce v. Samuels*, ___ U.S. ___, 136 S. Ct. 627, 629 (2016); *Williams v. Paramo*, 775 F.3d
 7 1182, 1185 (9th Cir. 2015), and regardless of whether his action is ultimately dismissed.
 8 *See* 28 U.S.C. § 1915(b)(1) & (2); *Taylor v. Delatoore*, 281 F.3d 844, 847 (9th Cir. 2002).

9 Section 1915(a)(2) requires all persons seeking to proceed without full prepayment
 10 of fees to submit an affidavit that includes a statement of all assets possessed and
 11 demonstrates an inability to pay. *See Escobedo v. Applebees*, 787 F.3d 1226, 1234 (9th Cir.
 12 2015). In support of this affidavit, prisoners must also submit a "certified copy of the trust
 13 fund account statement (or institutional equivalent) for . . . the 6-month period immediately
 14 preceding the filing of the complaint." 28 U.S.C. § 1915(a)(2); *Andrews v. King*, 398 F.3d
 15 1113, 1119 (9th Cir. 2005). From the certified trust account statement, the Court assesses
 16 an initial payment of 20% of (a) the average monthly deposits in the account for the past
 17 six months, or (b) the average monthly balance in the account for the past six months,
 18 whichever is greater, unless the prisoner has no assets. *See* 28 U.S.C. § 1915(b)(1); 28
 19 U.S.C. § 1915(b)(4). The institution having custody of the prisoner then collects
 20 subsequent payments, assessed at 20% of the preceding month's income, in any month in
 21 which his account exceeds \$10, and forwards those payments to the Court until the entire
 22 filing fee is paid. *See* 28 U.S.C. § 1915(b)(2); *Bruce*, 136 S. Ct. at 629.

23 Plaintiff did not pay the filing fee required to commence a civil action, nor has he
 24 filed a Motion to Proceed IFP pursuant to 28 U.S.C. § 1915(a)(1) and (2). Therefore, his
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 27 ¹ In addition to the \$350 statutory fee, civil litigants must pay an additional administrative fee of \$50. *See*
 28 28 U.S.C. § 1914(a) (Judicial Conference Schedule of Fees, District Court Misc. Fee Schedule, § 14 (eff.
 Dec. 1, 2014)). The additional \$50 administrative fee does not apply to persons granted leave to proceed
 IFP. *Id.*

case cannot yet proceed. *See* 28 U.S.C. § 1914(a); *Andrews*, 493 F.3d at 1051.

II. Conclusion and Order

For the reason explained above, the Court:

(1) **DISMISSES** this action sua sponte without prejudice for failing to pay the \$400 civil filing and administrative fee or submit a Motion to Proceed IFP pursuant to 28 U.S.C. §§ 1914(a) and 1915(a);

(2) **GRANTS** Plaintiff **forty-five (45)** days leave from the date this Order is filed to re-open this case by: (a) prepaying the entire \$400 civil filing and administrative fee in full; *or* (b) completing and filing a Motion to Proceed IFP which includes a certified copy of his trust account statement for the 6-month period preceding the filing of his Complaint as is required by 28 U.S.C. § 1915(a)(2); S.D. CAL. CIVLR 3.2(b);² and

(3) **DIRECTS** the Clerk of the Court to provide Plaintiff with this Court's approved form "Motion and Declaration in Support of Motion to Proceed *In Forma Pauperis*." If Plaintiff fails to either prepay the \$400 civil filing fee or complete and submit the enclosed Motion to Proceed IFP within 45 days, his case will remain dismissed without prejudice based on his failure to satisfy 28 U.S.C. § 1914(a)'s fee requirements and without further Order of the Court.

IT IS SO ORDERED.

Dated: May 19, 2016


HON. LARRY ALAN BURNS
 United States District Judge

² Plaintiff is cautioned that if he chooses to proceed further by either pre-paying the full \$400 civil filing fee, or submitting a properly supported Motion to Proceed IFP, his Complaint will be screened before service upon any defendant and will be immediately dismissed as frivolous pursuant to 28 U.S.C. § 1915A(b) or 28 U.S.C. § 1915(e)(2)(B) regardless of whether he pays the full filing fee up front, or is granted leave to proceed IFP and to pay it in monthly installments. *See Lopez v. Smith*, 203 F.3d 1122, 1126-27 (9th Cir. 2000) (en banc) (noting that 28 U.S.C. § 1915(e) "not only permits but requires" the court to sua sponte dismiss an *in forma pauperis* complaint that is frivolous, malicious, fails to state a claim, or seeks damages from defendants who are immune); *Rhodes v. Robinson*, 621 F.3d 1002, 1004 (9th Cir. 2010) (discussing similar screening required by 28 U.S.C. § 1915A of all complaints filed by prisoners "seeking redress from a governmental entity or officer or employee of a governmental entity.").